80-623

Supreme Court, U. S.
FILED
SEP 23 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. ——

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

PERCY S. WINFIELD,

Appellant,

v.

WALGREEN CO., an Illinois Corporation,

Appellee.

~~An Appeal is Taken Pursuant to Sections 2101(c) and 1651(a) of Title 28 U.S.C.~~

~~MOTION FOR LEAVE TO FILE PETITION, AND~~ PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

TO: THE HONORABLE WARREN BURGER, CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Percy S. Winfield,
Attorney Pro Se,
for Appellant.

Percy S. Winfield
6134 S. Kenwood Ave.
Chicago, Illinois
BU 8-6131

Keenan Printing Company 312-648-0050 365

Questions Presented by this Appeal:

1. Whether the facts rising irrefutably from the record of Proceedings in the State Courts are of such serious constitutional dimension necessary to bring your Petitioner's case within the operative rationale and meaning of the "Due Process Clause" of the Fifth and Fourteenth Amendments of the United States Constitution and ipso facto in contravention of, repugnant to, and inconsistent with Article I, Sections 2 and 12 of the Illinois Constitution . . . and are of sufficient probative substance as to reasonably evoke an exercise of this Court's Power of Supervision pursuant to Title U.S.C., Sections 2101(c) and 1651(a)?

2. Where the record of Proceedings in the State Courts, clearly shows, that your Petitioner has been deprived of his constitutional right to a fair and impartial trial, and that he has exhausted all of his remedies in the State Courts, and now he is wholly without remedy, to wit;

Whether it would be within the exercise of a sound discretion on the part of this Honorable Court to grant the Writ of Certiorari to review the Proceedings in the State Courts . . . and to grant a plennary hearing commensurate with the gravity of constitutional harm inflicted upon your Petitioner?

3. Where an examination of the entire record of Proceedings in the State Courts shows on its face a demonstrative departure from "Constitutional standards of fundamental fairness," in violation of the "due process clause" of both the Federal and State Constitutions, to wit;

Whether it is incumbent upon the Supreme Court of the United States to make said examination, and determine whether your petitioner's constitutional rights have been abridged, curtailed, abbrogated or violated?

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American Construction Co. v. *Jacksonville Railway,* 148 U.S. 372, 380;

Ancient Egyptian Order v. *Michaux,* 27 U.S. 337, 344 (1928);

Cable Co. v. *Adams,* 155 U.S. 689, 698, 15 Sup. Ct. 268, 360;

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Chesapeake & Ohio Ry. Co. v. *Mihas,* 50 S. Ct. 42 (1929), 280 U.S. 102, 44 L. Ed. 207;

Clark v. *Fields,* 219 N.E. 2d 162;

Donovan v. *Pennsylvania Company,* 199 U.S. 279, 292, 26 S. Ct. 91;

Engel v. *Vilale,* 370 U.S. 421, 424, 82 S. Ct. 1261 (1962);

Griffen v. *Illinois,* 351 U.S. 12, 13 (1956);

Illinois Central Railroad Co. v. *Johnson,* 221 Ill. 42 (1906);

In re Chetwood, Petitioner, 165 U.S. 443, 461, 17 S. Ct. 385;

Kowalczyk v. *Swift & Co.,* 317 Ill. 312, 148 N.E. 59;

Little v. *Chicago Women's Bowling Assn'n,* 344 Ill. App. 65, 99 N.E. 2d 738;

Metlakutla Indians v. *Egan,* 363 U.S. 555, 559, 80 S. Ct. 1321 (1960);

Milliken v. *Tri-County Electric Co-op., Inc.*, 254 F. Supp. 203;

People v. *Brown*, 39 Ill. 2d 275, 311;

Pinkstaff v. *Pennsylvania R. Co.*, 31 Ill. 2d 518, 202 N.E. 2d 512;

Radio Station WOW v. *Johnson*, 226 U.S. 120, 129, 655 S. Ct., 1475 (1944);

Roller v. *Holly*, 176 U.S. 398, 399, 20 S. Ct. 410, 44 L. Ed. 520;

Shaw v. *Courtney*, 385, Ill. 559, 53 N.E. 2d 432;

Union Pac. R.R. Co. v. *Weld County*, 247 U.S. 282;

Water Company v. *Knoxville*, 200 U.S. 24 (1905);

Exparte Yerger, 75 S. Ct. 88, 106.

CONSTITUTIONAL PROVISIONS

The Federal Constitution

1. Fifth Amendment:

"No person shall be . . . deprived of life, liberty, or property, without due process of law . . ."

2. Fourteenth Amendment:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

The Illinois Constitution

1. Article 1, Section 2

Due Process and Equal Protection

"No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

2. Article 1, Section 12

Right to Remedy and Justice

"Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly."

No. ——

OCTOBER TERM, 1980

IN THE SUPREME COURT OF THE UNITED STATES

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

PERCY S. WINFIELD,

Appellant,

v.

WALGREEN CO., an Illinois Corporation,

Appellee.

An Appeal is Taken Pursuant to Sections 2101(c) and 1651(a) of Title 28 U.S.C.

NOTICE OF MOTION FOR LEAVE TO FILE PETITION, AND PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

TO: Kenneth F. Knight
175 W. Jackson Boulevard
Suite A. 1045
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on or before September 26, 1980, I shall file in the office of the clerk of the Supreme Court of the United States, the attached Motion and Petition.

Percy S. Winfield

Percy S. Winfield
Attorney Pro Se

Percy S. Winfield
6134 S. Kenwood Avenue
Chicago, Illinois 60637
BU 8-6131

Percy S. Winfield being first duly sworn on oath says that he served 3 copies of the foregoing NOTICE with MOTION attached on the above named party Sept. 19.., 1980, personally.

Percy S. Winfield

Percy S. Winfield
Attorney Pro Se

Subscribed and Sworn to
before me this ..... day
of September A.D., 1980.

.....
NOTARY PUBLIC

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI

NOW COMES Petitioner Percy S. Winfield, attorney pro se, and moves this Honorable Court, for leave to file his Petition for Writ of Certiorari.

IN SUPPORT THEREOF, the Petitioner respectfully represents unto the Court, that the reasons stated in his Petition are sufficient to sustain the issuance of said writ.

WHEREFORE, Petitioner prays that his Motion be granted.

Respectfully submitted,

Percy S. Winfield

Attorney Pro Se for
Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Questions Presented by this Appeal:

1. Whether the facts rising irrefutably from the record of Proceedings in the State Courts are of such serious constitutional dimension necessary to bring your Petitioner's case within the operative rationale and meaning of the "Due Process Clause" of the Fifth and Fourteenth Amendments of the United States Constitution and ipso facto in contravention of, repugnant to, and inconsistent with Article I, Sections 2 and 12 of the Illinois Constitution . . . and are of sufficient probative substance as to reasonably evoke an exercise of this Court's Power of Supervision pursuant to Title U.S.C., Sections 2101(c) and 1651(a)?

2. Where the record of Proceedings in the State Courts, clearly shows, that your Petitioner has been deprived of his constitutional right to a fair and impartial trial, and that he has exhausted all of his remedies in the State Courts, and now he is wholly without remedy, to wit;

Whether it would be within the exercise of a sound discretion on the part of this Honorable Court to grant the Writ of Certiorari to review the Proceedings in the State Courts . . . and to grant a plennary hearing commensurate with the gravity of constitutional harm inflicted upon your Petitioner?

3. Where an examination of the entire record of Proceedings in the State Courts shows on its face a demonstrative departure from "Constitutional standards of fundamental fairness," in violation of the "due process clause" of both the Federal and State Constitutions, to wit;

Whether it is incumbent upon the Supreme Court of the United States to make said examination, and determine whether your petitioner's constitutional rights have been abridged, curtailed, abbrogated or violated?

A CHRONOLOGY OF FACTS

The facts in this case are not complicated nor difficult and a summary of the proceedings in the State Courts are stated as follows:

The Plaintiff filed his complaint in the Court of first instant, November 20, 1978. A default judgment was entered December 18, 1978, by Judge O'Brian. December 27, 1978, the defendant filed a motion to vacate default judgment, be permitted to file Appearance, Jury Demand and Answer . . . instanter. An order was entered by Judge Meyer H. Goldstein, December 27, 1978, granting defendant's motion.

February 5, 1979, the plaintiff filed a Motion to expunge from the record of Proceedings, all documents filed for, by or on behalf of defendant Walgreen Co., Inc., and to correct the judgment in said cause. An Order was entered by Judge Meyer H. Goldstein, April 4, 1979, denying Plaintiff's motion.

The defendant filed a motion May 10, 1979 to strike the plaintiff's complaint, and an order was entered by Judge Harold M. Nudelman, May 10, 1979, striking the Plaintiff's Complaint.

The plaintiff filed his first amended complaint with the clerk of the Court, July 2, 1979. A Notice of Motion to strike plaintiff's first amended complaint was to this effect: "On August 5, 1979, at 10:00 A.M. . . . I shall appear before the Honorable Presiding Judge — Room 1302 . . . and move

to strike plaintiff's first amended complaint in accordance with the attached Motion." Under date of August 6, 1979, Judge Lester Foreman, entered an Order striking the Plaintiff's first amended complaint.

November 28, 1979, the Plaintiff filed with the Clerk of the Court a Motion to set aside the Order striking his first amended complaint. An Order was entered November 30, 1979, by Judge Thomas O. Donnell, denying plaintiff's motion to set aside the order striking the plaintiff's first amended complaint. The Order entered was in part to this effect: "There is no just reason to delay appeal or enforcement of this order."

Notice of Appeal, Request for Praecipe for record and an Agreed Statement of Facts were filed with the trial court, and a fee was paid for a transcript of the record to be sent to the Appellate Court.

A docketing statement was filed in the Appellate Court January 11, 1980, a fee paid, and an order entered by Judge Robert J. Downing, scheduling said cause for briefing. An order was entered February 1, 1980, by Judge John T. Atawn dismissing the Appeal.

A motion for direct appeal, with affidavit attached, in support thereof, and 11 accompanying documents were filed in the Supreme Court of Illinois, February 22, 1980. The said motion was treated as a petition for leave to appeal, and an order issued May 29, 1980, dening the petition for leave to appeal.

It is from that order, your petitioner is seeking relief in the Supreme Court of the United States.

JURISDICTIONAL STATEMENT

The Appellate Court of Illinois entirely disregarded and failed to consider vital issues raised in the docketing statement filed with the Court, and "so far departed from the accepted and usual course of Judicial Proceedings by way of affirmation of the trial court's order striking your petitioner's first amended complaint without proper notice being served, and without an opportunity to be heard in opposition, and the Supreme Court of Illinois has "so far sanctioned such a departure" by way of denying his petition for leave to appeal, while withholding consideration and adjudication of substantial issues raised in the Petition and in doing so abandoned its function as a reviewing court and deprived your Petitioner of the Right of Review.

REASONS FOR GRANTING WRIT OF CERTIORARI

1. Your Petitioner has exhausted all of his remedies in the State Courts, in vain and without success, and now he has nowhere else to turn for JUSTICE except the Supreme Court of the United States.

2. Your Petitioner is wholly without remedy unless this Court grants the Writ of Certiorari to review the Proceedings in the State Courts.

3. The right to a fair and impartial trial is protected by the "due process clause" of the Fifth and Fourteenth Amendments of the United States Constitution.

4. The Supreme Court of Illinois, a state court of last resort, has exceeded its jurisdiction and abused its discretion, and the writ of certiorari should be allowed as at common law, to correct excesses of jurisdiction and in furtherance of justice.

5. Constitutional issues were timely and properly raised in Motion with affidavit attached in support thereof with the court of first instance, November 28, 1979, and said motion and affidavit were as follows:

MOTION

Now comes plaintiff Percy S. Winfield, attorney pro se, and moves this Honorable Court, as follows:

(1) that the order striking the plaintiff's first amended complaint be set aside;

(2) that the plaintiff's first amended complaint be reinstated;

(3) that the defendant Walgreen Co. be ordered to file his answer to the first amended complaint instanter; or

(4) in the alternative, that judgment be entered on the pleadings in favor of the plaintiff for $50,000.00 plus the cost of suit, and in support of this motion, plaintiff attaches hereto his affidavit which is made a part hereof

Respectfully submitted,

PERCY S. WINFIELD
Attorney Pro Se.

AFFIDAVIT

Re: Percy S. Winfield v
Walgreen Co., Inc.
Case No. 78 M1 164

STATE OF ILLINOIS
COUNTY OF COOK
SS.

Percy S. Winfield, being first duly sworn on oath, states as follows:

1. The first amended complaint has been stricken by the Honorable trial judge Lester Foreman predicated on defendant Walgreen Co.'s Motion brought pursuant to Art. 4, Sec. 33(2), Ill. Civ. Prac. Act, without proper Notice being served on the plaintiff and without an opportunity for the plaintiff to be heard in opposition to the striking of the complaint.

2. The "Notice of Motion" served on this plaintiff was in part as follows: "On August 5, 1979, at 10:00 A.M. . . . I shall appear before the Honorable Presiding Judge—Room 1302. However, the date of August 5, 1979 was on a holiday, Sunday!"

3. There is nothing in the defendant Walgreen Co.'s Motion to have warranted the court in striking the complaint. The Motion is merely a self-serving statement. The complaint does not violate Sec. 33(2), Art. 4, Ill. Civ. Prac. Act as alleged in the Motion. The complaint states one single claim for $50,000.00 plus the cost of suit, and Sec. 33(3), Ill. Civ. Prac. Act is to this effect: "Pleading shall be liberally construed with a view to doing substantial Justice between the parties."

4. Affiant humbly submits to this Honorable Court that the conduct of defendant Walgreen Co.'s Attorney in not giving proper Notice, and in filing repetitious Motions to strike the Plaintiff's Complaints, without pointing out specifically defects in said complaints, borders on sharp practice and has a tendency to deceive the Court, "to defeat the administration of justice or to bring the courts or the legal profession into disrepute," and is offensive to Illinois Supreme Court Rule 752(a), and does violence to the legislative intent of Section 45(1) of the Illinois Civil Practice Act.

5. No man should be above the law. Be he an Honorable Judge; Powerful, rich and prestigious defendant; or even a poor, weak and injured, humble plaintiff.

6. May it please the court to note that the chronology of the proceedings in this case has involved the following Honorable Judges: Judge O'Brien, Judge Meyer H. Goldstein, Judge Harold M. Nudelman, and Judge Lester Foreman, who is reputed to have entered the order striking the first amended complaint. This case has been in court six (6) different times and considered by four (4) different judges, and yet, "substantial justice" has not been done between the parties.

7. Affiant submits that it is too difficult to contemplate and too burdensome to bear to think that this Honorable Court is the "alterego" of the learned counsel for the defendant Walgreen Co., Inc. Reason is not blind; nor is common sense a fool. Where there is no opportunity for the "probata" to support the "allegata", such a deprivation makes a sad commentary upon a judicial proceeding. Could any conduct on the part of the trial judge be more deleterious to and inconsistent with a proper administration of justice? Could any wrongful conduct on the part of a trial

judge be more calculated to defeat the administration of justice and destroy the faith of citizens in the efficacy of our courts?

8. The trial Judge owed the plaintiff a duty of not becoming a depository of arbitrary power; to be free from impropriety and avoid infractions of the law; to be impartial and diligent in endeavoring to ascertain the facts; and not to become affinity to conduct that has a tendency to defeat the administration of justice. The instrumentalities of the court are being used for the purpose of oppression and the jurisdiction of the court abused. The conduct of the trial court, in striking the complaint, was without reason, excuse or justification, and puts in issue the integrity of our legal system, exhibits the honor of our courts, and shows the quality of judges entrusted with the administration of justice. The shame itself cries out for instant remedy. The conduct of the trial court is clearly violative of Rule 61 of the Illinois Supreme Court relative to the standards of judicial conduct.

9. A serious question of constitutional dimension arises from the facts in this case:

Where the Trial Court so far departed from the accepted and unusual course of Judicial proceedings, by way of striking the plaintiff's first amended complaint, predicated on defendant Walgreen Co.'s Motion, where proper service was not made on the plaintiff, where the plaintiff was not before the court, and where the plaintiff had no opportunity to be heard in opposition to the Motion to strike; to wit,

Whether such a departure is in contravention of and does violence to the "due process clause" of the Fifth and Fourteenth Amendments of the United States Constitu-

tion . . . and ipso facto repugnant to, inconsistent with and violative of the "due process clause" of the Illinois Constitution, Article 1, Sections 2 and 12?

10. The plaintiff has been denied due process of law. A definitive meaning of "due process of law" may be stated as follows:

(1) In all cases, that kind of procedure is due process of law which is suitable and proper to the nature of the case, and sanctioned by the established customs and usages of the courts.

(2) Due process of law is a process which accords with those immutable principles of Justice conducive to a fair and impartial trial.

The authorities seem to be unison and without exception that "due process of law" encompasses the right of a plaintiff to be heard; right to a full hearing; right to a fair and impartial hearing; and the right to have the trial court consider and evaluate evidence having rational probative force or value.

11. Affiant is constrained to argue to the view of the court the sufficiency of his first amended complaint. The allegations in plaintiff's first amended complaint are sufficient in contemplation of law to sustain a cause of action against defendant Walgreen Co., Inc.:

(a) If a corporation "transacts any business within the State, or commits a tortious act within the State, "the corporation submits to the jurisdiction of the Courts. *Ill. Civ. Prac. Act,* Art. 3 Sec. 17(a) and (b).

(b) "No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he is called upon to meet. *Ill. Civ. Prac. Act.*, Art 4, Sec. 42(2).

(c) The purpose of pleading may be stated as follows:

(1) To analyze controversies between the parties;

(2) To segregate and formulate the points in dispute;

(3) To provide sufficient informations to enable the parties to properly prepare for trial;

(4) To provide sufficient information to enable the court to know exactly what questions are to be decided; and

(5) To provide a record showing the bases of the order, Judgment or decree entered. *Sunderland cases and Materials on* Judicial Administration, page 963.

(d) "A declaration which charges the corporation, by its agent, did or neglected to do, the act for which the liability is claimed is sufficient, and that proof upon trial of the fact that the agent is within the class for whose act or neglect the corporation may be held liable will entitle the plaintiff to recover." *Illinois and Federal Civil Practice Forums Annotated,* by Elson-Lassers-Wolf.

(e) The Supreme Court of Illinois, in the case of *McAndrews* v. *Chicago, Lake Shore and Eastern Ry. Company,* 222 Ill. 232, 78 N.E. 603, has intimated elements to make out cause of action as follows:

(1) the existence of a duty on the part of the defendant to protect the plaintiff from the injury of which he complains;

(2) a failure of the defendant to perform that duty; and,

(3) an injury to the plaintiff resulting from such failure. When these elements concur, they unitely constitute actionable negligence."

12. Any departure from those recognized and established requirements of law, however close the apparent adherence to mere form in method of procedure which has the effect to deprive one of a constitutional right, is as much an excess of jurisdiction as where there exists an inceptive lack of power. "The substance and not the shadow determines the validity of the exercise of the power." *Cable Co.* v. *Adams,* 155 U.S. 689, 698, 15 Sup. Ct. 268, 360.

13. The Court must give credence to and weigh evidence before it. *Milliken* v. *Tri-County Electric Co-op, Inc.,* 254 F. Supp. 203.

14. The State is required to afford a corrective judicial process to remedy the alleged wrong, if constitutional rights are not to be impaired. *Jones* v. *Kentucy,* 977 2nd 335; *People* v. *Sims,* 4 Ill. App. 3rd 876, 880 (1972).

WHEREFORE, for the reasons expressed herein, affiant prays that his motion be granted and that your affiant may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Further this deponent sayth not."

PERCY S. WINFIELD

Subscribed and sworn to
before me this 28th day
of November A.D., 1979
HARRY G. POSEY,
Notary Public.
(SEAL)

7. INCORPORATED BY REFERENCE

May it please the Court to note that your Petitioner's application for an extension of time to docket his appeal was granted July 31 1980 and to that application were attached 16 enumerated documents, among which were all the Orders entered in the proceedings of the State Courts, and that the said enumerated documents are herewith and hereby incorporated via reference into this petition.

ARGUMENT

A constitutional right or immunity is a heritage shared in common by every citizen of the United States of America. That heritage should be impartially administered by the courts. Your petitioner submits that the actions complained of "reach to a problem beyond the academic or episodic" to Principles, the settlement of which are of importance to the Public as distinguised from the parties, because, they embrace substantial issues of constitutional dimensions."

There has been legal impropriety affecting substantial rights of your petitioner and sufficiently grievous to justify this Court's superintendence and control of the State Courts to avoid clear miscarriage of justice. The Supreme Court of the United States is not required to respect conclusions of law unsupported by any evidence in the record.

Reason is not blind; nor is Common Sense a fool. Where the "Probata" is not allowed to support the "allegata" . . . makes a sad commentary upon a judicial proceedings.

Your Petitioner was never permitted to be heard on any of the documents filed in the proceedings of the State Courts.

CONCLUSION

WHEREFORE, your petitioner respectfully prays that the writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Illinois, commanding the Court to certify and send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case, numbered and titled on its Docket "No. 53090, Percy S. Winfield vs. Walgreen Co., an Illinois Corporation," and that said judgment of said Court may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Respectfully submitted,

Percy S. Winfield

PERCY S. WINFIELD,
Attorney Pro Se.

STATE OF ILLINOIS
COUNTY OF COOK
SS.

VERIFICATION

PERCY S. WINFIELD, being first duly sworn on oath, deposes and says:

That he is the Petitioner in the above entitled cause, that he has read the foregoing Petition, knows the contents thereof, and believes same to be true.

Percy S. Winfield

Subscribed and Sworn to before me this ..... day of September, 1980.

.....
NOTARY PUBLIC

Percy S. Winfield
6134 S. Kenwood Ave.
Chicago, Ill. 60637
BU 8-6131

80-629

Supreme Court, U. S.
FILED
SEP 23 1980
MICHAEL RODAK, JR., CLER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. ——

PERCY S. WINFIELD,

Petitioner,

v.

WALGREEN CO., INC., an Illinois Corporation,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Percy S. Winfield,
Attorney Pro Se,
for Appellant.

Percy S. Winfield
6134 S. Kenwood Ave.
Chicago, Illinois
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Keenan Printing Company 312-648-0050 365

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. ——

PERCY S. WINFIELD,

Petitioner,

v.

WALGREEN CO., INC., an Illinois Corporation,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

UNITED STATES OF AMERICA

STATE OF ILLINOIS
SUPREME COURT } SS.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the tenth day of March in the year of our Lord, one thousand nine hundred and eighty, within and for the State of Illinois.

PRESENT: JOSEPH H. GOLDENHERSH, CHIEF JUSTICE
JUSTICE ROBERT C. UNDERWOOD
JUSTICE HOWARD C. RYAN
JUSTICE THOMAS J. MORAN
JUSTICE DANIEL P. WARD
JUSTICE WILLIAM G. CLARK
JUSTICE THOMAS E. KLUCZYNSKI
WILLIAM J. SCOTT, ATTORNEY GENERAL
LOUIE F. DEAN, MARSHAL
ATTEST: CLELL L. WOODS, CLERK

BE IT REMBERED that, to-wit: on the 12th day of March, A.D. 1980, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

PERCY S. WINFIELD, *Petitioner,* No. 53090 vs. WALGREEN CO., INC., an Illinois Corporation, *Respondent.*	Petition for Leave to Appeal from Appellate Court First District 80-0077

And now, on this day, the Court having duly considered the motion by appellant, pro se, for direct appeal to this Court under Rule 302(b), and being now fully advised of and concerning the premises,

IT IS HEREBY ORDERED that the motion by appellant, pro se, for direct appeal to this Court under Rule 302 (b) be, and the same is, denied, and is treated as a petition for leave to appeal.

UNITED STATES OF AMERICA

STATE OF ILLINOIS
SUPREME COURT } SS.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the twelfth day of May in the year of our Lord, one thousand nine hundred and eighty, within and for the State of Illinois.

PRESENT: JOSEPH H. GOLDENHERSH, CHIEF JUSTICE
JUSTICE ROBERT C. UNDERWOOD
JUSTICE HOWARD C. RYAN
JUSTICE THOMAS J. MORAN
JUSTICE DANIEL P. WARD
JUSTICE WILLIAM G. CLARK
JUSTICE THOMAS E. KLUCZYNSKI
WILLIAM J. SCOTT, ATTORNEY GENERAL
LOUIE F. DEAN, MARSHAL
ATTEST: CLELL L. WOODS, CLERK

BE IT REMEMBERED, that, to-wit: on the 29th day of May 1980, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

PERCY S. WINFIELD, *Petitioner,* No. 53090 vs. WALGREEN CO., INC., an Illinois Corporation, *Respondent.*	Petition for Leave to Appeal from Appellate Court First District 80-0077

And now on this day the Court having duly considered the Petition for Leave to Appeal herein and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondent recover of and from said Petitioner costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 23rd day of June, 1980.

/s/ CLELL L. WOODS, Clerk.
Supreme Court of the State of Illinois.

(SEAL)

IN THE APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT

PERCY S. WINFIELD,
Plaintiff-Appellant,

v.

WALGREEN CO., an Illinois Corporation,
Defendant-Appellee.

No. 80-0077

ORDER

This cause coming on to be heard on the motion of the defendant-appellee, WALGREEN CO., to dismiss the appeal of the plaintiff-appellant, PERCY S. WINFIELD, due notice having been served upon the plaintiff-appellant and the Court being advised in the premises,

IT IS HEREBY ORDERED

The motion of the defendant-appellee is hereby granted. The appeal in the captioned cause is hereby dismissed and this cause is remanded to the Municipal Department, First District, Circuit Court of Cook County for further proceedings.

ORDER ENTERED FEB. 1, 1980
JOHN T. ATAWN,
Justice.

Name: KENNETH F. KNIGHT
Attorney for: WALGREEN CO., Defendant-Appellee
Address: 175 W. Jackson Blvd.
Suite A1045
City: Chicago, Illinois 60604
Telephone: 663-5385

GILBERT S. MARCHMAN, CLERK OF THE
APPELLATE COURT, FIRST DISTRICT

IN THE APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT

PERCY S. WINFIELD,
Plaintiff-Appellant,

v.

WALGREEN CO.,
Defendant-Appellee.

No. 80-0077

ORDER

In the above captioned appeal, the notice of appeal was filed on Dec. 28, 1979. The docketing statement filed with this court has been received and based upon the nature of the case, the following time schedule shall apply:

Record .....Feb. 29, 1980
Appellant's Brief .....May 29, 1980
Appellee's Brief .....Aug. 12, 1980
Reply Brief, if any .....Aug. 26, 1980

78 M1 164844

Enter Date: ORDER ENTERED JAN. 16, 1980

ROBERT J. DOWNING,
Justice.

GILBERT S. MARCHMAN, CLERK OF THE
APPELLATE COURT, FIRST DISTRICT

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

WINFIELD
v.
WALGREEN CO.
No. 78M1 164844

ORDER

This cause coming to be heard on the motion of the Plaintiff to set aside the order striking the Plaintiff's first amended complaint entered on August 6, 1979, due notice having been given and the Court having considered the Plaintiff's motion,

IT IS HEREBY ORDERED—

The Plaintiff's motion is hereby denied as the order of August 6, 1979 having granted leave to Plaintiff to file a second amended complaint within 60 days and the Plaintiff having failed to do so and the Plaintiff having brought his motion to set aside the order of August 6, 1979 after 30 days had passed.

There is no just reason to delay appeal or enforcement of this order.

FILED: NOV. 30, 1979
ENTER:
THOMAS P. O'DONNELL,
Judge.

Name: Knight
Attorney for: Walgreen Co.
Address: 175 W. Jackson
City: Chicago
Telephone: 663-5385

MORGAN M. FINLEY CLERK OF THE
CIRCUIT COURT OF COOK COUNTY

Supreme Court, U. S.
FILED
NOV 17 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-623

ON APPEAL FROM THE SUPREME COURT
OF ILLINOIS

PERCY S. WINFIELD,

Petitioner,

v.

WALGREEN CO., an Illinois Corporation,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO: THE HONORABLE WARREN BURGER, CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

THOMAS P. HAUGH,
Attorney for Appellee Walgreen Co.

THOMAS P. HAUGH,
175 W. Jackson Blvd.,
Suite A1045,
Chicago, Illinois 60604,
(312) 663-5385.

Keenan Printing Company 312-648-0050 365

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The Respondent, WALGREEN CO., in opposition to the Petition for Writ of Certiorari states that the Petitioner fails to satisfy the requirements of Rule 19 of the Rules of the Supreme Court of the United States governing the considerations of matters on Certiorari. The State Courts of Illinois have not departed from the accepted and usual course of judicial proceedings such that this Honorable Court should exercise its power of supervision. As stated more fully hereafter, the Petitioner has not been deprived of his right to trial, is not without remedy within the trial court, has not exhausted his remedies before the trial court and has not been prejudiced as the Petitioner has not had an order entered against him dismissing his first amended complaint or his cause of action. The Petitioner's first amended complaint was stricken with leave to amend and he may yet proceed to trial if he does file amended pleadings.

The order from which the Petitioner sought an appeal through the Illinois State Courts was entered in the Municipal Department of the Circuit Court of Cook County on November 30, 1979 and denies the motion of the Petitioner to vacate an order of Court dated August 6, 1979. As the Petitioner alleges and as the record reflects, the Respondent served a notice of motion upon the Petitioner bearing an incorrect date for hearing of August 5, 1979, a Sunday. The error was not noticed by either the attorney for the Respondent or the motion judge and on Monday, August 6, 1979, the motion of the Respondent to strike the Petitioner's first amended complaint was granted and a draft order entered on August 6, 1979 ex parte. A copy of that order was directed by letter to the Petitioner on August 6, 1979.

The order of August 6, 1979 struck the Petitioner's first amended complaint and granted the Petitioner leave to file a Second Amended Complaint within 60 days.

On November 30, 1979, the Petitioner moved to vacate the order of August 6, 1979 and in support of that motion filed a supporting affidavit. After a hearing, the Petitioner's motion was denied. The basis of the order is that by custom and practice in the Circuit Court of Cook County, all matters set for Court holidays are heard on the next day that Court is in session.

The effect of that order therefore, is to leave the order of August 6, 1979 standing wherein the Petitioner was granted leave to file a Second Amended Complaint. The Petitioner is not in default as to that order as no subsequent proceedings have been held. The Petitioner has not at any time offered to file such complaint nor has he sought leave to either extend the time in which to amend or to file such complaint.

The inclusion of the wording from Rule 304(a) in the order of November 30, 1979 does not confer jurisdiction on the Appellate Court where the order in fact is not an appealable order. The rule in Illinois is set forth in a line of Illinois Supreme Court cases wherein it has been stated:

> ". . . our review is limited to orders that can be characterized as final . . . An order of court which leaves a cause still pending and undecided is not a final order . . . Before we can call an order final, it must be dispositive of the issues and rights of the litigants . . . An order is final only when it terminates once and for all, the litigation or some definte part thereof." (citations omitted) *LaVida, Inc.* v. *Robbins,* 33 Ill. App. 2d 243, 178 N.E. 2d 412, 413 (2nd Dist. 1961).

". . . the inclusion of the special finding in the trial courts' order cannot confer appellate jurisdiction if the order is in fact not final." *Crane Paper Stock Company* v. *Chicago & Northwestern Railway Company,* 63 Ill. 2d 61, 344 N.E. 2d 461, 464 (1976), *Martino* v. *Barra,* 37 Ill. 2d 588, 229 N.E. 2d 545 (1967), *Davis* v. *Childers,* 33 Ill. 2d 297, 211 N.E. 2d 364 (1965).

By motion of the respondent WALGREEN CO., the Appellate Court of Illinois in appeal #80-007 dismissed the appeal of Petitioner, PERCY WINFIELD, on Februar 1, 1980 and remanded the case to the Municipal Department, (trial court) First District, Circuit Court of Cook County.

The Petitioner sought an appeal in the Supreme Court of Illinois. A response to the petition for leave to appeal was filed by the Respondent and on May 29, 1980 the Supreme Court of Illinois denied the petition for leave to appeal, #53090.

The status of the proceedings in the State Court is then such that the case is remanded to the trial court for further proceedings. In the trial court, no final orders have been entered, no complaint is on file and the parties are not now at issue. The Petitioner may then at this time seek leave to file a second amended complaint in the trial court and proceed to trial. There having been no final determination made, the Petitioner has not been prejudiced nor denied any right to trial or the right to be heard.

Respectfully submitted,

BY: THOMAS P. HAUGH,
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